HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.4539 of 2005

Dated: 03rd November, 2005

Between:

Sri James David Kalyanapu S/o..R.David, R/o.Rajahmundry, Correspondent of Douglas Memorial High School,

Rajahmundry, East Godavari District.

..... PETITIONER

AND

1. State of Andhra Pradesh rep. by its Secretary,

School Education, Secretariat, Hyderabad and others.

.....RESPONDENTS

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No. 4539 of 2005

ORDER:

This writ petition has been filed by James David Kalyanapu with a prayer to issue an appropriate writ or order more particularly one in nature of writ of Mandamus declaring the proceedings in Rc.No.433/B7-2/2003, dated 19.02.2005, issued by the Commissioner and Director of School Education, A.P., Hyderabad/2nd respondent, as arbitrary and violative of Articles 14 and 31 of the Constitution of India.

2. The petitioner is the Head Master-cum-Correspondent of Douglas Memorial Residential Elementary and High School, Rajahmundry, East Godavari District (for short, 'the School'). When he was found to be unfit on certain allegations, he challenged the proceedings by filing W.P.No.1708 of 2003. The said writ petition came to be disposed of by an order dated 12.12.2003. Paras.11 and 12 of the said order need to be noted and they are:

"11. It is, however, made clear that it is open to the Government to consider the matter afresh on merits with reference to the allegations levelled against the petitioner whether the allegations made against the petitioner constitute 'mismanagement' as contemplated under the proviso to Section 24(4) of the Act, justifying the declaration that the petitioner is not a fit person to act as Correspondent of the school in question. It is also made clear that the impugned order declaring that the petitioner is not a fit person to be the Correspondent of the school in question is not a valid ground to keep pending any other proposals submitted by the 6th respondent-management, to which they are entitled to.

12. It is to be further seen that the impugned proceedings are only proceedings declaring the petitioner to be unfit to act as the Correspondent of the school in question. If there is any fresh proposal sent by the management of the school in question by splitting the posts of Head Master and Correspondent of the school in question, it is open for the respondent-authorities to consider such proposal independently and without reference to the proceedings impugned in this writ petition."

It seems the management of the School has been insisting for change of Correspondentship of the School. On 12.04.2001 Managing Committee passed resolution with regard to change of Correspondentship and communicated the same to the Commissioner and Director of School Education, A.P., Hyderabad/2nd respondent, as contemplated under Section 24 of the Andhra Pradesh Education Act, 1982, (for short, the Act). The change of Correspondentship was not given effect because of the pendency of the writ petitions filed by the petitioner. After disposal of the W.P.No.1708 of 2003 filed by the petitioner, it appears a fresh proposal has been sent to the Commissioner and Director of School Education, A.P., Hyderabad/2nd respondent, to note the change of Correspondentship. The authorities, acting on the said proposal and basing on some enquiry reports, issued proceedings Rc. No.433/B7-2/2003, dated 19.02.2005, approving the change of Correspondentship of the School in favour of S.Imannuel Das with effect from 02.05.2001. The relevant portion of the proceedings needs to be noted and it is thus:

"The Hon'ble High Court in their final judgment orders dated 12.12.2003 in W.P.No.1708/2003 filed by Sri James David Kalyanapu (in which the Management of Douglas Memorial Residential High School,

Rajahmundry, has also impleaded as one of the Respondent) issued that 'If there is any fresh proposals sent by the management of the School in question by splitting the posts of Headmaster and Correspondent of the school in question, it is open for the respondent authorities to consider such proposal independently and it is open to the Government to consider the Correspondentship of the School afresh on merits.

As per the above High Court orders, the Management of Douglas Memorial Residential High School, Rajahmundry, has splitted posts of Headmaster and Correspondent and submitted proposals to the Director of School Education, A.P., Hyderabad, for approval of Correspondentship in favour of Sri S.Imannuel Das. The Regional Joint Director of School Education, Kakinada, after conducting a detailed hearing submitted proposals of Correspondentship in favour of Sri S. Imannuel Das in the reference 6th read above, as the Chairman of the School Committee appointed him as Correspondent of the School.

In view of the above Hon'ble High Court orders and as per the proposals submitted by the Regional Joint Director of School Education, Kakinada, and as per the provisions of A.P. Education Act 1 of 1982 read with G.O.Ms.No.74, Education, dated 27.02.1989 as amended in G.O.Ms.No.147, Education, dated 21.06.1990 the Director of School Education is pleased to approve the Correspondentship of Douglas Memorial Residential Elementary and High School, Rajahmundry, East Godavari in favour of Sri S.Immanuel Das w.e.f. 02.05.2001."

Assailing the proceedings dated 19.02.2005 of the Commissioner and Director of School Education, A.P., Hyderabad/2nd respondent, the outgoing Correspondent of the School has filed the writ petition.

3. The proceedings impugned in the writ petition are challenged on three grounds. *Firstly,* the retrospective approval of the Correspondentship is impermissible under the provisions of the Act; *Secondly*, the procedure prescribed for change of Correspondentship is not followed; *Thirdly*, the authority has not given any opportunity to the petitioner to represent his case before passing the order impugned in the writ petition.

4. 4th respondent filed counter affidavit. It is stated in the counter affidavit that the Regional Joint Director of School Education, Kakinada, East Godavari

District/3rd respondent, heard both the parties and submitted his report in Rc.No.445-B2/95, dated 01.02.2005 and thereafter, the Commissioner and Director of School Education, A.P., Hyderabad/2nd respondent passed the order impugned in the writ petition. It is further stated in the counter affidavit that change of Correspondentship was approved by the Commissioner and Director of School Education, A.P., Hyderabad/2nd respondent on 19.02.2005 and 4th respondent assumed the charge on 04.03.2005. I deem it appropriate to refer para.7 of the counter affidavit and it is thus:

> "7. The allegations in paras.11 and 12 of the Affidavit are incorrect and untenable. It is submitted that the 2nd respondent issued the proceedings dated 19.02.2005 after hearing the arguments of the petitioner and 4th respondent herein and after calling for the report from the 3rd respondent herein. The 3rd respondent conducted an inquiry on 24.11.2004 and 25.11.2004 by giving opportunity to the petitioner herein wherein he has perused the documents produced by the parties and submitted his report in Rc.No.445-B2/95 dated 01.02.2005 to the 2nd respondent for taking necessary action. The petitioner having participated in the inquiry and advanced all his contentions cannot now plead that he was not given proper opportunity to him. The 2nd respondent correctly issued proceedings in Rc.No.432/B2-2/2003 dated 19.02.2005 recognizing the 4th respondent herein as the Correspondent as nominated by the Management. The petitioner has no vested right to continue as Correspondent and all these years the authorities did not issue the proceedings in view of the interim orders obtained by the petitioner in the previous writ petitions even though there are no interim orders prohibiting the Department from issuing the proceedings in approving the Correspondentship of the 4th respondent. The 4th respondent-Correspondentship was approved by the Director of School Education on 19.02.2005 and he assumed the charge as Correspondent on 04.03.2005 itself and the petitioner without submitting any leave letter absented himself from that date. Hence, the petitioner is continuing as Head Master for the DMR School, Rajahmundry, since from 19.02.2005. There are no merits in the Writ Petition and the same is liable to be dismissed in *limini*."

5. Heard learned counsel appearing for the petitioner, learned Government Pleader for School Education appearing for the respondents 1 to 3 and learned counsel appearing for the 4th respondent.

6. Learned counsel appearing for the petitioner submits that approval of the Correspondentship with retrospective effect is not contemplated under the provisions of the Act and therefore, the order impugned in the writ petition is unsustainable and the same is liable to be set aside. It is also submitted by him that the Commissioner and Director of School Education, A.P., Hyderabad/2nd respondent, authorized the District Collectors in the State to note the change of Correspondentship in respect of private aided schools under all managements, and therefore, the proceedings impugned in the writ petition issued by the Commissioner and Director of School Education, A.P., Hyderabad/2nd respondent recognizing the change of Correspondentship in favour of 4th respondent are contrary to the proceedings in Rc.No.4271/B4-2/2004, dated 27.10.2004. He refers the proforma enclosed to the proceedings in Rc.No.4271/B4-2/2004, dated 27.10.2004. It is also submitted by him that the petitioner was not heard before passing the proceedings impugned in the writ petition by the Commissioner and Director of School Education, A.P., Hyderabad/2nd respondent, and therefore, removal of the petitioner as Correspondent of the School is in violation of the principles of natural justice.

7. Learned counsel appearing for the 4th respondent submits that the Regional Joint Director of School Education, Kakinada, East Godavari District/3rd respondent, conducted enquiry giving opportunity to both parties and thereafter, sent his report, which has been taken into consideration by the Commissioner and Director of School Education, A.P., Hyderabad/2nd respondent, in issuing the proceedings impugned in the writ petition. He further contends that the 4th respondent has specifically pleaded in the counter affidavit about the factum of hearing the parties by the Regional Joint Director of School Education, Kakinada, East Godavari District/3rd respondent and the said fact has not been controverted by the writ petitioner in the writ affidavit or in the supplemental affidavit.

8. The issue that falls for consideration is, whether the appointment of 4th

respondent as Correspondent of the School is legal and proper?

9. Section 24 of the Act deals with appointment and removal of manager of private institution. The competent authority as per G.O.Ms.No.74 Education dated 27.02.1989 as amended by G.O.Ms.No.147 Education dated 21.06.1990 for approval of the Correspondentship of Secondary Schools (High Schools) is Director of School Education. Added to that in the earlier round of litigation, a direction has been given to the respondent-authorities to consider the proposal sent by the management of the school for splitting the posts of Head Master and Correspondent of the School. It is the case of the 4th respondent that proposals have been sent in the year 2001 with regard to change of Correspondentship and the said proposals did not materialize because of the filing of writ petitions by the petitioner and obtaining interim orders therein. Be that as it may, a fact remains that a proposal has been sent to the Commissioner and Director of School Education, A.P., Hyderabad/2nd respondent, with regard to change of Correspondentship in July, 2004. Under Section 24 of the Act, the role of the competent authority is to approve the change of Correspondentship. The change of Correspondentship is consequent on the resolutions passed by the Managing Committee of the Society, which runs the school in question. The resolutions have been placed on record. It is explicit from the resolutions that 4th respondent has been nominated as Correspondent of the School in place of the writ petitioner. As per regulations of the Society, the President shall ordinarily be the Correspondent of the School for the purposes of carrying out all the duties of the management of the School in accordance with the Andhra Educational Rules. Regulation 24 says that the President shall as Correspondent of the School, submit periodical and other returns and statements to the departmental authorities, and carry on all correspondence with them, including claiming and receiving the grants due from the Government. The Managing Committee of the School in its meeting held on 12.04.2001 decided for bifurcation of the Correspondentship from the post of Head Master and appointed Rev.S.Immanuel Das as Correspondent. The resolution passed on 12.04.2001, copy of which has been placed on record along with the material papers enclosed to the counter affidavit, reads as follows:

"The Managing Committee meeting of D.M.R. High School and Ele. School, Rajahmundry, is held in its administrative office at Mount Zion, Banjara Hills, Hyderabad, on April 12, 2001 at 2 p.m.

The committee unanimously decided to decentralize the Correspondent and Head Master posts of the D.M.R. High School and Ele. School, Rajahmundry, which are under the charge of one person until now. It is decided to discharge the present correspondent Mr.James D. Kalyanapu, who is also working as the H.M. of the said school, from the Correspondentship with immediate effect from the date of this resolution and appoint a new person as correspondent to upgrade the standard of the D.M.R. High School and Ele. School, Rajahmundry."

The President nominated Rev. S. Immanuel Das/4th respondent as Correspondent of the School in place of the writ petitioner-James D. Kalyanapu and communicated the same to the respondent-authorities. Since the change of Correspondentship is in accordance with the regulations of the Society which established the School in question, I do not see any valid ground to set aside the proceedings impugned in the writ petition where under appointment of 4th respondent as Correspondent of the School has been approved. The next question is, whether the approval can be retrospective. It is conceded by the learned counsel appearing for the 4th respondent that approval of the Correspondentship cannot be retrospective. In that view of the matter, I deem it appropriate to dispose of the writ petition modifying the proceedings impugned in the writ petition to the extent that the appointment of 4th respondent as Correspondent shall be effective from the date of the impugned proceedings.

10. Accordingly, the writ petition is disposed of. No costs.

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B.SESHASAYANA REDDY, J.

Dated: 03rd November, 2005.

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